



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JUNE 13, 2022

IN THE MATTER OF:

Appeal Board No. 623406

PRESENT: GERALDINE A. REILLY, MEMBER

In Appeal Board Nos. 623405, 623406, and 623407, the Appeal Board, on its own motion pursuant to Labor Law § 620 (3), has reopened and reconsidered the

Judge's decisions, filed March 22, 2022, that sustained the initial determinations holding the claimant ineligible to receive benefits, effective March 4, 2020 through March 7, 2020, on the basis that the claimant was not available for employment; charging the claimant with an overpayment of \$125 in benefits recoverable pursuant to Labor Law § 597 (4); and reducing the

claimant's right to receive future benefits by four effective days and charging a civil penalty of \$100 on the basis that the claimant made willful misrepresentation to obtain benefits. The Judge did not rule on the initial determinations holding the claimant ineligible to receive benefits, effective August 5, 2020 through August 12, 2020, on the basis that the claimant was not available for employment and reducing the claimant's right to receive future benefits by four effective days on the basis that the claimant made a willful misrepresentation to obtain benefits.

At the combined telephone conference hearing before the Administrative Law Judge, testimony was taken. There was an appearance by the claimant.

Our review of the record reveals that the case should be remanded to hold a hearing. The record was not sufficiently developed on the determinations of availability and willful misrepresentation relating to the August 2020 period. The Judge erroneously stated that there was no issue of availability before him, when in fact, there was. The parties should have another opportunity to

submit additional testimony and other evidence on these issues.

Now, based on all of the foregoing, it is

ORDERED, that the decisions of the Administrative Law Judge be, and the same hereby are, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render new decisions, on all issues, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

GERALDINE A. REILLY, MEMBER